

# Public Domain Enhancement Act

## Enhancing the public domain

Only two percent of published works between 55 and 75 years old continue to retain their commercial value. Yet those works will not enter the public domain for many years, meaning that 98 percent of those works are abandoned and unavailable. Zoe strongly believes that a vibrant public domain benefits both copyright holders and the public as a whole. The Public Domain Enhancement Act, introduced by Zoe in the 109th Congress, ensures that long-forgotten stories, songs, pictures and movies are given back to the public, rather than lost forever.

The Public Domain Enhancement Act offers American copyright owners an easy way to maintain their copyrights while allowing abandoned works to enter the public domain. It requires that American copyright owners pay a simple \$1 fee to maintain their copyrights 50 years after publication. If the owner fails to pay the \$1 fee, the copyright expires and the work enters the public domain. In addition, copyright owners are required to submit a form identifying the copyright holder to facilitate proper licensing of copyrighted works.

Zoe has received the endorsement of the American Library Association, the Association of Research Libraries, the American Association of Law Libraries, and Public Knowledge. In addition, a vast array of film archivists, directors, actors, consumer groups, and academics support the bill.

## STATEMENT OF CONGRESSWOMAN ZOE LOFGREN (CA-16th)

### THE PUBLIC DOMAIN ENHANCEMENT ACT

Before I describe the specific provisions of the Public Domain Enhancement Act, I wanted to say a word about why the public domain is so important to our society.

Our Founding Fathers chose to grant a "limited monopoly" to creators in order to give them an economic incentive to create new works. But our Founding Fathers also recognized that society has an interest in the free flow of ideas, information and commerce. That is why copyright protection does not last forever.

When a copyright ends, the works they protect enter the public domain, where they can be freely copied or used to create derivative works. Both commercial and noncommercial creators depend on a healthy public domain. A 1998 CRS Report detailed several examples, including book publishers who print titles from the public domain and make them available to the public at reduced prices, and others who depend on the public domain as a source of raw material for new productions, such as a movie based on an old book or a theme song based on old musical arrangements. Schools, museums and libraries use works in the public domain to create pictorial and textual materials for educational and cultural purposes, and archivists depend on the public domain to restore and preserve historical works.

The public domain has always been a vital source for creativity and innovation. But with the advent of the Internet, it is now more important than ever. No longer are out-of-print books or forgotten songs automatically sentenced to the ash-heaps of our cultural history. The emergence of digital technology and the World Wide Web has created a way to reawaken these hidden treasures, and has empowered more and more of us to become creators in our own right.

Yet the continued vitality of the public domain has suffered. Digital rights management technologies and the DMCA give content owners the power to create perpetual copyrights that never reach the public domain. In addition, the Supreme Court's decision in *Eldred v. Ashcroft* upheld a 20-year extension on works copyrighted after 1923. This decision will keep many abandoned works out of the public domain until 2019.

In a well-reasoned dissent in the *Eldred* case, Justice Breyer hit the problem right on the head. He found that only 2 percent of works between 55 and 75 years old retain commercial value. Yet under the law that was upheld by a majority of the Supreme Court, these abandoned works will not enter the public domain for many years. This prevents commercial entities and the public from building upon, cultivating and preserving abandoned works. As Justice Breyer stated, while older works are less likely to retain commercial value, they are more likely to "prove useful to the historian, artist, or teacher."

Indeed, one need only look to the supporters of this bill to see who's really affected by the attacks on the public domain. I'm proud to have the endorsement of the American Library Association, the Association of Research Libraries, the American Association of Law Libraries and Public Knowledge. We also have letters of support from a vast array of film archivists, directors, actors, consumer groups, and academics.

So how does the Public Domain Enhancement Act stem the attacks on the public domain? Similar to the maintenance fees required for patent holders, the bill requires American copyright owners to pay a simple \$1 fee to maintain their copyrights after 50 years of protection. Let me be absolutely clear on this point. This bill does nothing to affect the first 50 years of copyright protection. After 50 years, the copyright owner only has to pay a \$1 fee to maintain the copyright. Only if the owner fails to pay the \$1 fee does the copyright expire and the work enter the public domain.

To facilitate the proper licensing of copyrighted works, the bill also requires American copyright owners to submit a form identifying their name and address, the title of the work, and the date of first publication.

The minimal burden that this system places on copyright owners is well worth the enormous societal benefits this legislation will have. This bill will breathe life into the 98% of older works identified by Justice Breyer; those long-forgotten stories, songs, pictures and movies that are no longer published, read, heard, or seen. It is time to give these treasures back to the public.

## SUPPORTERS OF REP. LOFGREN'S PUBLIC DOMAIN ENHANCEMENT ACT

American Library Association

Association of Research Libraries

American Association of Law Libraries

Public Knowledge

The Internet Archive

San Francisco Center for the Book

Electronic Frontier Foundation

Lawrence Lessig

Professor of Law

Stanford Law School

Director, Center for Internet and Society

Snowden Becker

The J. Paul Getty Museum

Chair, Small Gauge and Amateur Film Institute

Group of the Association of Moving Image Archivists

Howard Besser

Director, Moving Image Archive and Preservation Program

New York University, Tisch School of the Arts

James Boyle

William Neal Reynolds Professor of Law

Duke Law School

Karen Gracy

School of Library and Information Science

University of Pittsburgh

Brian Graney

New Mexico State Records Center and Archives

Co-Chair, Regional Audio Visual Archives Interest

Group of the Association of Moving Image Archivists

Davis Guggenheim

Director

Lynne Kirste

Academy Film Archive

Michael Kribs

Film Preservationist

Oregon Historical Society

Thomas D. Moritz

Harold J. Boeschstein Director, Library Services

American Museum of Natural History

Stephen Parr

Director

San Francisco Media Archive

Rick and Megan Prelinger

President and Vice President

Prelinger Archives

Elizabeth Shue

Actor

Dan Streible

Associate Professor of Film Studies & Orphan Film Symposium Director

University of South Carolina

Chair, Moving Picture Access and Archive Policy Committee,

Society for Cinema and Media Studies

Dwight Swanson

Archivist

## Northeast Historic Film

### SECTION BY SECTION ANALYSIS OF REP. LOFGREN'S

#### PUBLIC DOMAIN ENHANCEMENT ACT

##### SECTION 1:

Designates the title as the "Public Domain Enhancement Act."

##### SECTION 2:

Sets forth factual findings with respect to the societal benefits of a healthy public domain. Both commercial and noncommercial creators depend on a healthy public domain. For example, book publishers print titles from the public domain and make them available to the public at reduced prices. Others depend on the public domain as a source of raw material for new productions, such as a movie based on an old book or a theme song based on old musical arrangements. Schools, museums, and libraries use works in the public domain to create pictorial and textual materials for educational and cultural purposes. In addition, media sources like the World Wide Web benefit from the freedom of public domain content, such as historical materials placed on the Web by the Library of Congress.

Despite these benefits, current law continues to protect many abandoned works at the expense of the public domain. In his dissent in *Eldred v. Ashcroft*, Justice Breyer found that only 2 percent of works between 55 and 75 years old continue to retain commercial value. Yet those works will not enter the public domain for many years. This prevents commercial and noncommercial entities from building upon, cultivating, and preserving abandoned works. Indeed, while older works are less likely to retain commercial value, they are more likely to prove useful to the historian, artist, or teacher.

It is time to restore vitality to the public domain by establishing a mechanism by which abandoned American copyrights can enter the public domain.

##### SECTION 3:

(a) Section (a) makes a technical change to the definition of "United States work" to reflect the new maintenance fee for published American works.

(b) Section (b) makes technical changes to sections 302, 303(a) and 304 of Title 17 to reflect the new maintenance fee for published American works.

(c) Section (c) creates the mechanism by which abandoned American copyrights can enter the public domain. Similar to the maintenance fees

required for patent holders, American copyright owners would be required to pay a de minimis \$1 fee to maintain their copyrights after 50 years of protection. If they fail to pay the fee, the copyright would expire and the work would enter the public domain.

To facilitate the proper licensing of copyrighted works, section (c) also requires American copyright owners to submit with the fee a form identifying their name and address, the title of the work, and the date of first publication.

Ultimately, this system will benefit both content owners and the public. Content owners who wish to continue to protect their copyrights will have an easy mechanism by which to do so, while the vast number of abandoned works will enter the public domain after 50 years, where they can be read, seen, heard, preserved, and built upon by all Americans.

#### SECTION 4:

Section 4 directs the Register of Copyright to establish procedures to minimize the burden of submitting the required form, including procedures to allow the electronic submission of the form to the Copyright Office. It also requires the Register to establish procedures to make information in the forms readily accessible to the public, so that those who wish to utilize protected copyrights can obtain the proper licenses.